

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

STATE OF NEW MEXICO on the)	
relation of State Engineer,)	
)	
Plaintiff,)	
)	69cv07941-BB
-v-)	
)	RIO CHAMA STREAM SYSTEM
ROMAN ARAGON et al.,)	Section 7, Rito de Tierra Amarilla
)	
Defendants.)	Subfiles No. CHTA-004-0037
)	CHTA-004-0018

SPECIAL MASTER REPORT
RECOMMENDING DISMISSAL OF OBJECTIONS

To: The Honorable Bruce D. Black
Chief Judge

From: Vickie L. Gabin
Special Master

This report recommends granting the motions filed by the Office of the State Engineer to dismiss objections to priority dates and irrigation water requirements filed by two defendants in response to the Court's show cause proceedings.

THIS MATTER is before the Special Master following motions to dismiss filed in open court during the September 27, 2010, Pretrial Scheduling Conference on objections to notices and orders to show cause (*see* Docket No. 9948). Fed. R. Civ. P. 7(b)(1)(A).

Background

This matter is one piece of the proceedings to complete the adjudication of water rights claimed in the Rito de Tierra Amarilla Subsection of Section 7 of the Rio Chama Stream System. On June 3 and 4, 2010, the Court filed a Notice and Order to Show Cause for defendants Lionel E. Martinez II (Subfile No. CHTA-004-0037) and Colomex Oil and Gas Co., Inc. (Subfile No. CHTA-004-0018), notifying each of the opportunity to object to the priority date and irrigation water

requirements proposed for the Tierra Amarilla Community Ditch by the State of New Mexico, *ex rel.* State Engineer (State) (Nos. 9870, 9891). Each Notice instructs the defendant of (1) the necessity for filing a form Objection and Response for receipt by the Court no later than July 31, 2010, (2) the necessity for attending a mandatory scheduling and pretrial conference before the Special Master, and (3) the fact that an untimely response and the failure to attend the scheduling conference will preclude the ability to raise objections to priority and irrigation water requirements in the future. Defendant Martinez's objection was received by the Court and filed August 4, 2010 (No. 9930); Colomex's objection was received and filed July 22, 2010 (No. 9914). No other objections were filed by any other water rights defendant in this Subsection.

I entered an Order Setting Pretrial Scheduling Conference on September 27 for both defendants (No. 9948), and stated:

Attendance at this pretrial conference is mandatory for defendants, their attorneys, if they have them, and counsel from the Office of the State Engineer. Failure to appear may result in a dismissal of the defendant's objection pursuant to the Order Granting Motion for Approval of Form of Notice and Orders to Show Cause, filed May 4, 2010 (No. 9707).

Neither defendant appeared on September 27. Mr. Ed Newville, counsel for the State, moved that the defendants' objections be dismissed on the ground that they failed to appear, and further pointed out that Mr. Martinez' objection was untimely filed.

Findings

1. Defendant Martinez failed to timely file a form Objection and Response to Notice and Order to Show Cause, and failed to appear at the mandatory scheduling and pretrial conference held September 27, 2010.
2. Mr. Martinez's untimely filing should not be grounds for dismissal of his objections *See*

Panis v. Mission Hills Bank, N.A., 60 F.2d 1486 (10th Cir. 1995) (where no bad faith has been shown, a court may allow a late answer to be filed where appropriate).

3. A representative for Defendant Colomex timely filed a form Objection and Response to Notice and Order to Show Cause, but failed to appear at the September 27 scheduling and pretrial conference.

Recommendation

I recommend that the Court dismiss defendants' objections to the show cause orders on the ground that they failed to appear at the mandatory scheduling and pretrial conference.

Respectfully submitted,

Vickie L. Gabin

SPECIAL MASTER

THE PARTIES ARE NOTIFIED THAT WITHIN 21 DAYS OF SERVICE of a copy of this Special Master Report, they may file written objections with the Clerk of the Court pursuant to Federal Rules of Civil Procedure 53(f)(2). A party must file any objections with the Clerk of the Court no later than 21 days after receiving the Report if that party wants the District Judge to hear the objections.